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CANADIAN COMPANY LAW

A Note upon the Jurisdiction of the Dominion and the Provinces in respect to the incorporation of Companies,

By G. M. CLARK, Barrister-At-Law

TORONTO

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The written constitution of the Dominion of Canada is provided by the British North America Act, passed in 1867, being Imperial Act 30–31, Vict. Chap. 3. The scheme of the Act is to divide the legislative powers between the Dominion and the various Provinces by giving to the Provinces exclusive authority over certain named subjects, and to give exclusive Legislative authority to the Dominion Parliament over all other subjects. Under the Canadian Constitution, therefore, the residuum of Legislative power is with the Federal Government.

Clause 11 of Section 92 of the British North America Act gives exclusive power to the Provinces to make Laws in relation to the incorporation of companies with Provincial objects, and Clause 2 of the same Section gives the Provinces exclusive power to make Laws in relation to direct taxation within the Province in order to raise revenue for Provincial purposes.

POWERS OF PROVINCIAL CORPORATIONS

The meaning of the Clause "the incorporation of Companies with Provincial objects" has been considered by the Courts in several cases, such as Ottawa Fire Ins. Co. vs. Canadian Pacific Railway, 39 Supreme Court Reports 405, and in re Companies, 48 Supreme Court Reports 331. The various Judges differ somewhat widely upon this point, some holding that the limitation defined in the expression "Provincial objects" is territorial and also has regard to the character of the powers which may be conferred upon companies locally incorporated, and others that the limitation is not territorial but has regard to the character of the powers only. The latter is probably the more general opinion among Lawyers. But it appears clear that a Province cannot grant a charter which, in its terms, purports to confer on a corporation the right to carry on its operations beyond the limits of the Province. On the other hand, a Provincial company seems to have the clear right in the transaction of its business to contract with parties or corporations residing outside of the Province in matters which are ancillary to the exercise of its substantive powers. In exercising these powers outside of the Province it is a foreign company and depends for the exercise of those powers upon the sanction accorded by the comity of the Province or country in which it seeks to operate.

POWERS OF DOMINION CORPORATIONS

Under its residuum of power the Dominion has the right to incorporate all companies save those with Provincial objects, and this has been suggested in the Companies Case (supra) to mean the incorporation of Companies with Dominion objects, *i.e.*, Companies for the carrying on of works and operations within the Legislative jurisdiction of the Parliament of Canada, or business or affairs "unquestionably of Canadian interest and importance." It would also appear that the Dominion alone has the power to incorporate a company with the express purpose of carrying on business abroad. In the latter case, of course, the Company would be subject to the Law of the country in which it desires to operate.

While the power of the Dominion to incorporate companies for the purpose of carrying on business in more than one Province has always been recognized, nevertheless the Provinces assumed the right to compel such companies to obtain Provincial sanction before carrying on their operations within the Province. Practically all of the Provinces have passed Statutes requiring Dominion companies to obtain, upon payment of fees, Provincial Licenses before transacting business within the Province, and subjecting such Companies to penalties and denying to them the right to use the Provincial Courts in the event of failure to obtain such Licenses.

PROVINCIAL JURISDICTION OVER DOMINION CORPORATIONS

The right of the Provinces to pass and enforce this Legislation has been seriously questioned and has just recently been under consideration by the Judicial Committee of the Privy Council in the case of John Deere Plow Co. *v.* Wharton, 18 Dominion Law Reports, 353. In this case the company was incorporated by the Dominion with power to carry on its business throughout the whole of Canada and it applied for a Provincial License to carry on business in the Province of British Columbia. The License was refused on the ground that the company's name unduly conflicted with the name of a company previously incorporated by that Province. The company, however, proceeded to carry on its business in British Columbia, and an action was brought to restrain it from so doing in the absence of a Provincial License. The case was taken to the Privy Council which held ultra vires that part of the Provincial Legislation which prohibited Dominion Companies from trading within the Province or suing in the Provincial Courts until a Provincial license had been obtained. The Privy Council there laid down the Law that a Company incorporated by the Dominion with Dominion objects exercises its powers and transacts its business as of right throughout the whole of Canada and that a Province cannot legislate so as to deprive a Dominion Company of its status and powers. The Judicial Committee was careful to state that a Dominion Corporation is subject to Provincial Laws, such as the Law of Mortmain, and can properly be taxed by the Province by a direct tax for Provincial revenue, but it very clearly states that the Province has no right to require a Dominion Company to obtain Provincial sanction before exercising its powers within the Province.

It is, therefore, clear that those parts of all the Statutes now in force in the various Provinces requiring Dominion Companies to obtain Licenses before carrying on business with the Province are ultra vires as they are all framed upon the basis of Provincial sanction to Dominion Companies. Exception must be noted of the Statute of the Province of Quebec which does not require Dominion Corporations to take out Licenses and also of the Province of Prince Edward Island which has no such Statute at all.

WHERE TO INCORPORATE

No doubt, new Legislation will be passed by the various Provinces to meet the condition of affairs arising under the John Deere Plow case, and one might reasonably expect that it will take the form of imposing a direct tax upon Dominion companies, probably to be paid with the filing of the first and Annual Statements of Affairs, as the Judicial Committee stated that the Provinces had the right to require such Companies to file Statements for the purposes of information and there is no question about the power of the Province to impose a direct tax for the purpose of raising a Provincial revenue.

In any event, however, it would seem preferable now to incorporate under Dominion Legislation if it is intended that the Company should carry on its operations in more than one Province; if, on the other hand, the Company's substantive or "functional" powers are to be exercised within one Province it is proper to incorporate within that Province and to depend upon the comity existing between the various Provinces and foreign States for the exercise of its ancillary powers outside of that Province. It is to be remembered that a Dominion Company is a domestic company in every Province, while a Provincial company is a foreign company in every Province save the one in which it is incorporated.

THE BLUE SKY LAW OF ARKANSAS (Laws 1913, p. 904) has been held not in violation of the federal or state constitutions, in so far as it affects the rights of a foreign company, nor void because of the unreasonableness of its requirements, or on the ground it is not within the police power of the State. In this case the statute was examined only so far as it affected the complainant, a foreign corporation. A copy of the act is set forth in full in the opinion. Standard Home Co. *v.* Davis, 217 Fed. 904, District Court, E. D. Arkansas, W. D.

THE TAX ON FOREIGN INSURANCE COMPANIES IN ARKANSAS, imposed by Laws of 1873, p. 248, Kirby's Digest, Sec. 4365, at the rate of three per cent. on all premiums received by the company during the year has been declared unconstitutional by the Supreme Court of that State on the ground that it violates Art. 10, Sec. 17 of the Constitution of 1868, which exempts from taxation all privileges, pursuits and occupations of real use to society. State *v.* New York Life Ins. Co., 171 S. W. 871.

THE FRANCHISE TAX LAW OF ARKANSAS, Act No. 112, Laws of 1911, is constitutional. In so deciding the United States Supreme Court repeats the following propositions as well established: (*a*) No state can compel a party, individual, or corporation to pay for the privilege of engaging in interstate commerce; (*b*) this immunity does not prevent a state from imposing ordinary property taxes upon property having a situs within its territory, although it be employed in interstate commerce; and (*c*) the franchise of a corporation, although that franchise is the business of interstate commerce, is, as a part of its property, subject to state taxation provided, at least, the franchise is not derived from the United States. Applying these principles the court sees no difficulty in sustaining the tax as a legitimate imposition upon a foreign corporation with respect to its exercise of the privilege of transacting intrastate business in corporate form. The fact that the railroad company in this case was also subject to a tax under Act No. 251, Laws 1911, on its franchise as a railroad company, does not invalidate the Act. Nothing in the Fourteenth Amendment to the federal constitution imposes any ironclad rule upon the states with respect to their internal taxation, or prevents them from imposing double taxation, or any other form of unequal taxation so long as the inequality is not based upon arbitrary distinctions. The act in question provides for the forfeiture of the right to do business in Arkansas after default in payment of the tax. If that is held to include the right to do business of an interstate character the act will be invalid unless that provision can be treated as separable from the rest of the Act. The State Court has not as yet construed that section and until it does the United States Supreme Court will assume that the forfeiture of right to do business will be limited to the privilege of doing intrastate business only; or else that the provision being void for unconstitutionality, will be treated as severable from the other provisions of the Act. St. Louis Southwestern Railway Co. *v.* Arkansas *ex rel.* Norwood, 35 Sup. Ct. Rep. 99.

THE TAX ON THE AUTHORIZED CAPITAL STOCK OF FOREIGN CORPORATIONS imposed by the laws of California (Civil Code, Sec. 409 and Laws 1905, Page 493) was declared void by the Supreme Court of that State in the case of H. K. Mulford Co. *v.* Curry, July 3, 1912, 44 Cal. 80. See Journal No. 33. In a sweeping opinion the court decided that the law imposing an entrance fee based on the entire authorized capital stock of a foreign corporation (Civil Code, Sec. 409) was void, and took occasion to state that not only was the annual corporation excise tax law (Laws 1905, P. 493) void as to foreign corporations doing business both within and without the state, but void as well when applied to domestic corporations doing business outside the state. The court was forced to this conclusion upon the authority of the United States Supreme Court as expressed in the Western Union and Pullman Company cases, 216 U. S. 1, 56 and 216. The California legislature subsequently repealed the excise tax law (Laws 1913, ch. 336). Now the Supreme Court of California in a lengthy opinion reverses its decision in the Mulford case. It states its inability to reconcile the decisions of the United States Supreme Court in the Western Union and Pullman Company cases with the later cases entitled Baltic Mining Co. and S. S. White Dental Mfg. Co. *v.* Commonwealth of Massachusetts, 231 U. S. 68, 34 Sup. Ct. 15, 58 L. Ed. 127. In the former it was held that a tax imposed on the entire authorized capital was void, in the latter, that a tax "measured by" the entire authorized capital stock was

valid; in the one the property itself outside the state was considered to be taxed, in the other, that the property itself was not taxed. The California court thinks the later cases lead to the irresistible conclusion that the United States Supreme Court has receded from the position it took in the earlier ones, but is confronted with the declaration in those later cases that the highest federal court has "no disposition to limit the authority" of the earlier cases. In such a state of confusion the California court decides to hold that the taxes referred to are excise and not property taxes, and therefore valid, in order that the question may be carried to the federal Supreme Court for final determination. Albert Pick & Co. *v.* Jordan, 145 P. 506. Thus until the question has been reviewed by the Supreme Court of the United States foreign corporations will be compelled to pay, as a pre-requisite to doing business in California, an entrance fee based upon their total authorized capital stock.

THE RIGHT OF A DOMINION COMPANY TO DO BUSINESS IN THE PROVINCES OF CANADA has been the subject of much controversy in the Canadian courts. The Judicial Committee of the Privy Council, Canada's highest court of appeal, has finally decided that the British North America Act empowers the Dominion Government to form companies to transact business throughout Canada, and that the Provinces cannot impose upon such companies any conditions, restrictions or taxes as a condition precedent to doing business in the Province. Dominion companies, however, are none the less subject to provincial laws of general application. In this particular case the laws of British Columbia were declared invalid in so far as they purport to compel a Dominion Company to take out a provincial license. The laws of none of the other provinces were in issue and therefore have not been declared invalid. It may be that the other Provinces which impose entrance requirements on Dominion companies will continue to enforce those laws until they are formally declared invalid by the Canadian Courts, following the judgment in the present case—or until the Provincial legislatures amend the laws to conform to the principles now announced. We publish as a Supplement to this number of the Journal a comment on this case by George M. Clark, Esq., of the Ontario Bar.

It may be interesting to note that the Privy Council held in this case that the Province of British Columbia could not deny entrance to a Dominion company on the ground that its name conflicted with the name of a company already registered in the Province. John Deere Plow Company *v.* Wharton, 18 Dominion Law Reports 353.

POWER OF DIRECTORS TO MORTGAGE PROPERTY IN COLORADO. Notwithstanding Rev. Stats. 1908, Sec. 865, providing that the directors of a manufacturing corporation shall have no power to mortgage the corporation's plant until the question shall have been submitted to the stockholders, and the majority of all the shares of stock shall have been voted in favor of the proposition, a mortgage given by the directors of a manufacturing corporation without the consent of the stockholders, is not void but voidable only at the suit of the stockholders. Dillon *v.* Myers *et al.*, 146 P. 268.

AMENDMENTS TO THE CORPORATION ACT OF DELAWARE. At the session of the Delaware Legislature which adjourned on March 16, 1915, several important amendments were made to the Corporation Act of that State, briefly summarized as follows:

CERTIFICATES OF INCORPORATION hereafter filed must state the name of the county in which the principal office of the corporation is to be located, and in towns or cities of over 6,000 inhabitants, the street and number of such principal office or place of business, and the address by street and number of the resident agent. Should the resident agent be not a resident of, nor located in, an incorporated town or city, then the Hundred of its or his location or residence, and post-office address, shall be stated. (Senate Bill 163, approved and in effect March 8, 1915, amending section 5, subdivision 2, of the General Corporation Laws, being paragraph 1919 of the Revised Code.)

CHANGE OF PRINCIPAL OFFICE OR RESIDENT AGENT. The resolution adopted by the board of directors to change the location of the principal

office or to change the resident agent of the corporation must state in detail the address of the principal office and registered agent, as required by the amendment referred to in the preceding paragraph with respect to the certificate of incorporation. (Senate Bill 163, amending section 79 of the General Corporation Laws, being paragraph 1993 of the Revised Code.)

ANNUAL REPORT. The annual report to be filed on or before the first Tuesday in January in each year must hereafter state the location of the principal office of the corporation with the same degree of particularity required in the certificate of incorporation by the amendment referred to in the second preceding paragraph. The annual report will also be required to state hereafter the amount of capital stock actually issued instead of the amount of capital stock actually paid in as heretofore. (Senate Bill 166, approved and in effect March 8, 1915, amending section 2 of the Franchise Tax Law, being paragraph 103 of the Revised Code.) This amendment also requires all companies to file the annual report, but permits the Secretary of State in his discretion to remit the filing fee in the case of charitable or beneficial organizations carried on without profit or of corporations that are required to file a report with the Insurance Commissioner for which a fee is collected.

ANNUAL FRANCHISE TAX. Section 12 of the Franchise Tax Act, being paragraph 113 of the Revised Code, is amended with respect to the proclamation of the Governor, published annually concerning corporations which have failed to pay the annual franchise tax for two years. The law formerly required this proclamation to be published in such newspapers and for such length of time as the Governor designated. The amendment provides for publication "once in one newspaper within the State." (Senate Bill 115, approved and in effect March 2, 1915.)

BANKING POWERS DEFINED. Section 4 of the General Corporation Laws, being paragraph 1918 of the Revised Code, denies banking powers to corporations organized under the Act. The present amendment adds a proviso that corporations formed to deal in commercial paper or to loan money on notes, open accounts or other similar evidences of debt as collateral security, shall not be construed to be exercising banking powers within the prohibition of that section. (Senate Bill 163.)

RESIDENT AGENT. The resident agent for corporations may now be, by express terms of the statute, an individual or a corporation resident of or located within the State. (Senate Bill 163, amending sections 5 and 32 of the General Corporation Laws, being paragraphs 1919 and 1946 of the Revised Code.) The same Act also amends section 79 of the General Corporation Laws, being paragraph 1993 of the Revised Code, by expressly providing that the resident agent may be changed in the same manner as the location of the principal office is changed.

RESIDENT DIRECTOR. The requirement that at least one of the directors of each corporation shall be a resident of the State has been repealed. All of the directors may now be non-residents of Delaware. (Senate Bill 163, amending section 9 of the General Corporation Laws, being paragraph 1923 of the Revised Code.)

SERVICE OF LEGAL PROCESS ON CORPORATIONS—Section 48 of the General Corporation Laws, being paragraph 1962 of the Revised Code, is amended to permit service of process, in addition to the methods heretofore provided, to be made on the resident agent at the principal office of the corporation or at his home, if he is an individual. If the resident agent is a corporation, service may be made upon its president, secretary or any director. If service cannot be made in any other manner provided by the statute, it may be made on the Secretary of State who, in turn, shall notify the corporation by letter addressed to its last registered office. (Senate Bill 163.)

FORFEITURE OF CHARTER—The Attorney-General on the relation of any interested party shall commence proceedings in quo warranto against any corporation which fails to obey the mandate of any peremptory writ of mandamus issued by a Delaware Court of competent jurisdiction. (Senate Bill 163.)

DISSOLUTION—A new section is added to follow section 39 of the General Corporation Laws, being paragraph 1953 of the Revised Code and to be known as 1953a, section 39a, reading as follows:

"On and after March 1, 1915, the publication of the certificate of dissolution provided for in 1953, section 39, shall be under the supervision of the Secretary of State who shall cause such certificate to be published in one issue in a newspaper published in the county wherein the principal office of the dissolved corporation was situated. The Secretary of State shall ascertain the charge for publishing the certificate of dissolution as aforesaid and collect the amount from the corporation before the certificate of dissolution is issued." (Senate Bill 164, approved and in effect March 8, 1915.)

The provision in section 39 requiring the board of directors to publish the certificate of dissolution for four successive weeks is not expressly repealed.

RENEWAL OF CHARTER—A new Act providing for the renewal of charters of corporations whose original charters have expired by reason of failure to renew the same through oversight or inadvertence, or whose charters have been renewed but through failure to comply strictly with the provisions of the General Corporation Law, is provided for in Senate Bill 167, approved and in effect March 9, 1915.

THE USE OF THE WORD "TRUST" IN THE CORPORATE NAME. The Act of March 31, 1911, being paragraph 642 of the Revised Code, restricted the use of the word "trust" to corporations reporting to and under the supervision of the Insurance Commissioner of the State and required such corporations to make at least two reports each year to the said Commissioner. This Act was repealed by House Bill 272, approved and in effect February 18, 1915.

THE FOREIGN CORPORATION LAW—The Act providing for the regulation of foreign corporations doing business in Delaware was inadvertently omitted from the Revised Code which has just been completed by the Code Commissioners. To remedy this omission House Bill 63, approved and in effect January 27, 1915, re-enacts the former law, without change and makes it a part of Chapter 65 of the Revised Code.

We have published the amendments referred to above in pamphlet form, copies of which may be obtained at any of our offices.

A DELAWARE CORPORATION MAY PURCHASE ITS OWN STOCK without express authority, when not prohibited by its charter. The General Corporation Act of Delaware, Sec. 19, provides that a company cannot use its funds or property to purchase shares of its own capital "when such use would cause an impairment of the capital of the corporation." This is held to mean a reduction of the amount of the assets of the company below the amount represented by the aggregate outstanding shares of the capital stock of the company. In other words a corporation may use only its surplus for the purchase of its own capital stock. *In re:* International Radiator Co. 92 A. 255.

THE "BLUE SKY" LAW OF FLORIDA IS CONSTITUTIONAL—The Supreme Court of that state has held that Chapter 6422, Acts of 1913, entitled "An act to define domestic and foreign investment companies; to provide for the regulation and supervision of same; to provide conditions and terms under which corporations, foreign and domestic, can sell to persons in Florida stock and other securities * * *," is not unconstitutional on the ground that the title is defective or misleading, that the act authorized is administrative and not judicial and that it does not deprive local corporations of property rights without due process of law or so discriminate against them as to deny equal protection of the laws. The act includes any corporation selling its own stock or securities outside of the county in which it has its principal office or place of business. It provides for registration with the Comptroller, who together with the Attorney General must determine that the company is solvent and its plan for the transaction of business is fair, just and equitable. The act is printed in full in the opinion. Ex parte Taylor, 66 S. 292.

A FOREIGN CORPORATION IN IDAHO IS SUBJECT TO FOREIGN ATTACHMENT—Although it has duly complied with all constitutional and statu-

tory provisions affecting foreign corporations it is a non-resident and subject to attachment as such. Jennings *v.* Idaho Railway, Light & Power Co., 146 P. 101.

IN ILLINOIS a corporation cannot be organized for the purpose of owning or holding real estate. An assignment of a lease to such corporation is void, but the stockholders of the company acquire an equitable interest in the property, arising not out of the deed but out of the payment of money and the performance of the covenants which construed the consideration for the lease. Johnson *et al. v.* Northern Trust Co. *et al.*, 106 N. E. 814.

A KANSAS CORPORATION MAY NOT COMMENCE BUSINESS until it has filed with the Secretary of State an affidavit that not less than twenty per cent. of its authorized capital has been paid in actual cash or property equivalent thereto. (Gen. Stats. 1909, Sec. 1709). The Supreme Court of Kansas finds no penalty in the statute for breach of this requirement and holds that failure to file the affidavit does not affect the corporate existence, does not make the incorporators liable as partners and does not invalidate contracts made by the corporation. The State alone can complain of the neglect of the corporation. Murdock *v.* Lamb *et al.* 142 P. 961.

FAILURE TO FILE AN ANNUAL REPORT WITH THE STATE AUDITOR OF KENTUCKY on or before October 1 is punishable by a fine imposed by Sec. 4078 of the Kentucky statutes, reading as follows:

> "Any corporation, or officer thereof, willfully failing or refusing to make reports as required by this chapter shall be deemed guilty of a misdemeanor, and for each offense shall be fined one thousand dollars and fifty dollars for each day the same is not made after October the first of each year."

The Court of Appeals of Kentucky hold that the word "willfully" as used in this section does not mean a deliberate refusal to file the report but rather any failure as a voluntary act of a party as distinguished from coercion, and that failure to receive a blank form of report from the Auditor General is no excuse. Although for twenty years it has been the custom of the Auditor to send out such forms, he is under no duty to do so, except upon request. In the case at bar the penalty amounted to $1,900 for eighteen days' delay in filing the report. Nashville, C. & St. L. Ry. Co. *v.* Commonwealth, 169 S. W. 511.

FOREIGN CORPORATIONS IN MASSACHUSETTS held to be engaged in interstate commerce. Several foreign corporations recently brought petitions to recover excise taxes paid by each for the privilege of doing business in the Commonwealth. In determining whether the several petitioners were subject to the tax, the Supreme Judicial Court, Suffolk County, discusses at length the distinctions between interstate and intrastate commerce. In the cases before the Court, it held that a foreign corporation is engaged solely in interstate commerce in Massachusetts when it maintains wireless stations in the commonwealth from which it transmits messages to and from ships on the high seas and foreign countries, but neither transmits nor receives any messages over land or in or through the commonwealth. It also held that transactions described as follows were interstate commerce: A corporation which is engaged in the business of buying and selling coal and coke has at its office in Boston a manager in charge of New England business, who is paid by check from New York, a salesman and a stenographer. Records of sales are kept at the Boston office, and money is kept on deposit at a local bank for the expenses of the office. Customers do not come to the office, but are called upon by the salesman who sends all orders to New York for acceptance and approval before the sales take place. Goods are shipped from a point without the commonwealth. Payments are made by remittances to New York. No stock of goods is kept in the commonwealth and the only property is office furniture. Cheney Bros. Co. *v.* Commonwealth 106 N. E. 310.

FOREIGN CORPORATIONS HELD TO BE "DOING BUSINESS" IN MASSACHUSETTS—A Connecticut corporation maintains in Boston an office and salesroom, with one office salesman and four traveling salesmen. No books are kept and no collections are made, a stock of samples is kept, but no other goods. Orders are subject to approval by the home office in Connecticut and goods are shipped directly from there to the consumer. The contract of sale is completed

in Connecticut, where the title passes. This the court holds, in the case cited in the preceding paragraph, is "doing business" in Massachusetts, saying in part: "This description of the place maintained by the corporation in Boston, and the character of business transacted there shows something outside interstate commerce. A fixed abode has been established, which is used as the headquarters for its New England business. It is almost a necessary inference from the maintenance of an "office and salesroom" with one permanent salesman, that customers resort thither in considerable numbers for the purpose of examining samples and placing orders. It reasonably may be assumed that here also are fixed all the terms of a very substantial number of sales, and that the only thing required to complete the transaction is the bald approval by the company at its home office. It is not only a permanent home for the corporation for the carrying on of its New England sales business, but it has many of the characteristics of a local salesroom. The stock of samples kept on hand is large enough apparently to require the constant attendance of one salesman."

In the case of another corporation held to be "doing business" the Court reached its conclusion on the facts that the corporation kept at its office in Boston stock to repair and replace broken parts of machines. This was held to be local business, separable from its interstate commerce, and not within the protection of the commerce clause, although the separation might render the interstate commerce profitless.

A manufacturing Company located outside of Massachusetts employs a number of men in the state to solicit orders for its goods from retail merchants, which orders are turned over to the nearest wholesale dealer and the corporation has nothing further to do with them. The wholesaler fills the orders from his stock and is paid by the retailer. In other words, the salesman in the employ of the manufacturing company, solicits business for the wholesaler by whom he is not employed. This the Court holds is in substance the business of providing agents for the wholesalers, and partakes in no respect of interstate commerce. The fact that a natural result may be to increase the sales of the manufacturing corporation to the wholesalers is an immaterial circumstance. It is too remote from the actual business of its salesmen to constitute interstate commerce.

A holding company organized under the laws of a foreign state, whose assets are stocks and bonds of foreign corporation and land located outside of Massachusetts, but which has an office in that state at which it receives and pays dividends, holds directors' and stockholders' meetings and keeps its records and financial books of account is "doing business" in the commonwealth.

A foreign corporation owning a mine outside of Massachusetts and selling its products exclusively outside of the commonwealth, but which maintains its Treasurer's office in Boston, for general direction of the deliveries of its product, keeping a record of sales and deliveries, paying salaries, distributing dividends and holding directors' meetings is doing business in the commonwealth.

The opinion from which the foregoing brief extracts are taken is the first in which the Supreme Judicial Court of Massachusetts exhaustively discusses the question of what constitutes "doing business" in that commonwealth so as to bring a foreign corporation within the provisions of its statutes relating to foreign corporations.

RESTRICTIONS ON THE TRANSFER OF STOCK are lawful in Massachusetts. A provision in an agreement of association that "none of the shares of the capital stock shall be sold, hypothecated or transferred without consent of three-fourths of the capital stock of the corporation," supplemented by a provision of the same tenor in the by-laws which prescribed the procedure to be followed when any stockholder desired to sell his stock, and a notice of the restriction on the certificates of stock, effectually prevented the sale or transfer of stock without consent of three-fourths of the capital stock of the company, and those who attempted to hold office by virtue of shares transferred in violation of the restriction were held to be subject to ouster by writ of mandamus. Howard W. Longyear *v.* Fred H. Hardman, *et al.*, Supreme Judicial Court of Massachusetts—not yet reported.

CHANGE OF OFFICERS OF A MASSACHUSETTS CORPORATION. Whenever a change is made in the officers of a domestic corporation subject to the provisions of Chapter 437 of the Acts of 1903 a certificate of such change must forthwith be filed with the Commissioner of Corporations. Formerly such certificate was required to be signed and sworn to by the president, the clerk and a

majority of the directors. By an amendment approved February 17, 1915, Ch. 15, L. 1915, this certificate need now be signed and sworn to only by the clerk of the corporation.

THE FOREIGN CORPORATION LAWS OF MINNESOTA (Sections 6206, 6207 G. S. 1913) provide that every foreign corporation doing business in that state shall appoint an agent and maintain an office or place of business in the state, file with the Secretary of State a copy of its charter and a statement of its business, and pay a fee into the state treasury. Section 6208 provides that: "No corporation which shall fail to comply with the foregoing provisions shall maintain any suit or action, * * * in any of the courts of this State." The Supreme Court of Minnesota holds that the statute was not intended to apply to corporations engaged in interstate commerce but only to foreign corporations doing local business in the state. The omission of a foreign corporation to comply with the law as to local business does not render its previous interstate transactions either void or unenforcible in the state courts. Where a foreign corporation disposed of its goods through the medium of distributors or jobbers and retail dealers under contracts limiting the territory in which and the persons to whom they could sell and the prices they should charge; publicly advertised its wares for the purpose of attracting consumers to buy of its dealers and employed traveling salesmen who took orders for goods which were filled from New Jersey or were turned over to distributors in Minnesota and were filled by them, it was not doing an intrastate business, the transactions between the corporation and its distributors being out and out sales without condition. The court goes on to say that some of the restrictions imposed by the corporation upon its distributors and dealers particularly those which limited the price at which they might sell may have been void but this did not change the relation of the parties. Some of the provisions of these contracts may have been consistent with a contract of agency but taking all of the transactions together the court decides that the relation of the parties was clearly that of vendor and vendee and not of principal and agent. (Victor Talking Machine Company *vs.* Lucker, 150 N. W. 790.)

THE FOREIGN CORPORATION LAW OF MISSISSIPPI, Sec. 935, Code of 1906, requires every foreign corporation for profit to file a copy of its charter of incorporation with the Secretary of State, and provides a penalty of not less than one hundred dollars for failure to do so. The Statute does not state that contracts entered into before complying with the law are void, but the Supreme Court holds that such contracts are void and unenforceable, as a necessary result of the implied prohibition of the Statute. Quartette Music Co. *v.* Haygood *et al.*, 67 S. 211.

AGENTS FOR FOREIGN CORPORATIONS ENGAGED IN INTERSTATE COMMERCE are not subject to local ordinances imposing license taxes on vendors. In the case of City of Lee's Summit *et al. v.* Jewel Tea Co., 217 Fed. 965, the following transactions were held to constitute interstate commerce:

The Jewel Tea Company is an Illinois merchandising corporation, with headquarters at Chicago, in that State. It employed an agent residing in Missouri. The agent canvassed from house to house in Lee's Summit for orders for future delivery of teas and coffees. The orders taken were mostly for half-pound and pound lots. He forwarded the orders to the company at Chicago, giving the quantities only, not the names of the purchasers. At Chicago the company put up the goods in small packages according to the quantities ordered, so as to permit of exact delivery to each purchaser without breaking. On each package was marked its price, but not the name of the purchaser. The packages were then put into a large box or other receptacle and shipped by freight to Lee's Summit; the company being both consignor and consignee. When the shipment arrived at Lee's Summit, the agent received it, opened the box or container, had it hauled around on a dray, delivered the packages unopened to those who had given the orders, and collected payment for them on delivery. At the same time he solicited further orders. He made the rounds about twice each month, and by other canvassing endeavored to increase the trade. The agent remitted the moneys collected to the company at Chicago. He had no financial interest in the business save his salary, which was paid from that city. Occasionally a purchaser would refuse to accept and pay. In such case the package intended for him was sent to a branch house of the company at Kansas City, Mo., but all the goods delivered in Lee's Summit were shipped directly there from Chicago in the way described.

A FOREIGN CORPORATION IN MISSOURI may own real estate without first obtaining authority to do business. The mere act of holding and owning such property does not constitute "doing business" within the meaning of section 3039, Revised Statutes of Missouri, 1909. Broadway Bond St. Co. *v.* Fidelity Printing Co., 170 S. W. 394.

THE FOREIGN CORPORATION LAW OF MONTANA has heretofore exacted a fee based upon the entire authorized capital of foreign corporations for the privilege of doing business in the state. (Revised Codes, Sec. 165.) The Statute was held to be valid, as imposing an excise and not a property tax, in State *ex rel.* General Electric Co. *v.* Alderson, Secretary of State, 140 Pac. 82, but the Court expressed some doubt as to the wisdom of the legislature in failing to fix a reasonable limit upon the amount to be exacted from any one corporation. The legislature meeting this year thereupon amended the law so as to impose the tax upon the proportion of capital stock employed by the corporation in Montana. The act also provides for the filing of a report each year for the purpose of assessing the tax on any increase of the amount of capital in the state since the last payment. H. B. 145, L. 1915, approved and in effect Feb. 27, 1915.

THE NEVADA "WILD CAT" LAW, Laws of 1909, Ch. 56 as amended by Laws 1911, Ch. 202, required certain mining companies to file statements with the County Recorder and Attorney General and to stamp their stock certificates with the words "promotion stock" or "treasury stock." This law was repealed by Assembly Bill No. 61, approved by the Governor on March 2, 1915, to take effect at once.

THE NEW JERSEY CORPORATION ACT as amended by Laws of 1913, chapter 18, limits the right of one corporation to hold the stock of another corporation. The New Jersey Supreme Court holds that this statute is applicable to foreign corporations doing business in that state, and since the public policy of the state, as declared by the legislature, is to prohibit the purchase of stock by one corporation in that of another such policy must control contracts of that kind made in New Jersey. Therefore, the court will not lend its aid to enforce contracts for the purchase of stock in New Jersey corporations against foreign corporations when the contracts to purchase such stock are made in New Jersey. Island Heights and Seaside Park Bridge Co. *v.* the Brocke & Brocke Corporation—not yet reported.

MERGER OF NEW JERSEY CORPORATIONS. The opinion of the Supreme Court of New Jersey in the case of American Malt Corporation *et al. v.* Board of Public Utility Commissioners *et al.*, see Journal No. 44, has been affirmed by the Court of Errors and Appeals, 92 A. 362. The Court said in part: "The question whether or not the Supreme Court has the power to review and reverse the determination of such Board (of Public Utility Commissioners) in the matter of approving or disapproving the merger of corporations under ch. 19 of the laws of 1913, not having been raised or argued, is not decided. The judgment of the Court below will be affirmed for the reasons stated in its per curiam, except as to the observation to the effect that the action of the board in these matters must be reasonable and not arbitrary. Upon that question we express no opinion."

THE CORPORATION ACT OF NEW JERSEY provides that no stock shall be issued for profits not yet earned but only anticipated. (Ch. 14, Laws 1913.) The Court of Chancery says "While our statute may not contemplate the capitalization of prospective future prospects, it is clear that no present earning capacity can be made the intelligent basis of valuation without due consideration of future prospects; but where there are prospects of increased future earning capacity, the present earning capacity demonstrated by actual operation clearly affords a proper basis of valuation of a business of this peculiar nature, if the future prospects are not also capitalized." In the case at bar the business was protected by a patent and it appeared that the demand would necessarily increase. The valuation of the plant was based on its earning capacity capitalized at six per cent. Railway Review Co. *et al. v.* Groff Drill and Machine Tool Co., 91 A. 1021.

AN ADDITIONAL FRANCHISE TAX ON TRANSMISSION AND TRANSPORTATION CORPORATIONS for the privilege of carrying on business in a corporate capacity within the state is imposed by Section 184 of the Tax Law of New

York. The tax exacted is equal to five-tenths of one per centum upon the gross earnings on transportation originating and terminating in the State of New York. By its express terms, the statute provides that the tax shall not include earnings derived from business of an interstate character. The Supreme Court of the United States holds that the right of the Federal Government to regulate navigation on navigable rivers and streams is supreme and may not be interfered with by the laws of the states. The New York statute, however, does not impose a license tax as a prerequisite to the navigation of waters under federal control, but rather for the privilege of carrying on such business in a corporate capacity, and the state may so tax a corporation engaged in the towing business on the Hudson River without infraction of the superior authority of the United States concerning the navigation of rivers. The fact that the corporation made up its tows in a part of the river located within the territorial limits of New Jersey and that the course pursued by its steamers in going up and down the river was partly in New York and partly in New Jersey, did not constitute interstate commerce, where the port of departure and the port of destination were both within the State of New York. The People of the State of New York on the Relation of Cornell Steamboat Company *v.* William H. Sohmer, as Comptroller of the State of New York, Case No. 62, October Term, 1914, decided January 5, 1915.

THE STOCK TRANSFER TAX LAW OF NEW YORK, Sec. 270 of the Tax Law as amended by Laws of 1913, c. 779, provides that the transfer of a certificate of stock which invests the holder either with the beneficial interest or with the legal title to the stock, is taxable. Before the amendment of 1913, the New York Courts held that the statute intended to impose a tax only upon a transfer or an agreement to transfer a share of stock, and that any paper or agreement which amounted to less than this was not taxable. U. S. Radiator Co. *v.* State, 208 N. Y. 144. The Supreme Court, Appellate Division, Third Department, now holds that "the plain language of the amended statute is contrary to the ruling in the Radiator Case, but the statute indicates a purpose, in the most positive and unequivocal words, to tax the transfers of certificates (and of course certificates are not shares) of stock, as well as the transfer of shares of stock. In other words, the amendment makes the transaction taxable, even though there is no transfer of stock, but only a transfer of the 'legal title' to the stock. This amendment to the statute removes the ambiguity in the original enactment, and broadens the law beyond its scope at the time of the decision in the Radiator Case. A transfer of the certificate itself, the mere 'scrap of paper,' to use a recent famous expression, is made taxable now, as well as a transfer of the share of stock—the intangible right to participate in the dividends and assets of the corporation." Wm. P. Bonbright & Co. *v.* State, 151 N. Y. Supp. 35. In another case recently decided the New York Supreme Court, Appellate Division, Third Department, holds that "certificates of subscription" are not certificates of stock and transfers thereof are not taxable where the stock itself was not to be issued until the last installment was paid and the certificates of subscription conferred no right on the holders to vote or to participate in dividends. Sohmer *v.* Herden, 151 N. Y. Supp. 346.

STOCK ISSUED FOR PATENT RIGHTS—The Stock Corporation Law of New York, Sec. 42, authorizes a corporation to purchase any property necessary for its use or lawful purposes and to issue stock therefor. In the absence of fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive. The Federal District Court for the Eastern District of New York holds that if the directors honestly fixed the value at which patent rights were acquired in exchange for stock, the fact that such patent rights later became valueless would not prove that the action of the directors was incorrect. The good faith on the part of the directors is not impugned by misfortunes of the business or lack of experience of the parties conducting it. Alpha Portland Cement Co. *v.* Schratwieser, 215 Federal 982.

A FOREIGN CORPORATION IS NOT "DOING BUSINESS" IN NEW YORK when it has no place of business, no office and no stock of goods in the state, and which simply consigns goods to merchants for sale, the contracts being subject to approval of the corporation in another state. The fact that local dealers sell the goods in their own names, under conditional sale agreements, and then assign such contracts to the corporation, which retains title until the entire purchase price

is paid, and collects the instalments through its agents in New York, is a mere incident to interstate commerce. Chase-Hackley Piano Co. *v.* Griffin, 149 N. Y. Supp., 998.

ACTS NOT CONSTITUTING "DOING BUSINESS" IN NEW YORK so as to require a foreign corporation to obtain a certificate of authority under sections 15 and 16 of the General Corporation Law and section 187 of the General Tax Law, were recently stated by the Supreme Court, Appellate Term, First Department. Gilmer Bros. Co. *v.* Singer, 149 N. Y. Supp. 904. In this case the foreign corporation had a salesman in the state who took orders for merchandise, sending such orders to the home office of the corporation in North Carolina, where credit was passed upon and the order either accepted or rejected. If the order was accepted and the goods shipped, the agent received a commission. Payment of the goods was made direct to the home office of the corporation. In some instances the agent adjusted disputes between the corporation and its customers as to prices and the telephone used by the agent was leased in the joint names of himself and the corporation. But none of these facts, the Court holds, indicate that the corporation was so engaged in business in the state as to require a license.

FAILURE TO FORMALLY DISSOLVE A NEW YORK CORPORATION before distributing the assets renders the directors liable to creditors to the extent of the property which would have been applicable to the payment of their claims if the Company had been formally dissolved, but, in the absence of fraud or bad faith, it does not necessarily render them liable to the full amount of such claims. Curran *v.* Oppenheimer, 150 N. Y. Supp. 369.

UNISSUED TREASURY STOCK may be sold or issued by a New York corporation without giving existing stockholders an opportunity to purchase. It is only when capital stock is increased by the issue of new shares that each holder of the original stock has a right to subscribe for and demand from the corporation such a proportion of the new stock as the number of shares already owned by him bears to the whole number of shares before the increase. Archer *v.* Hesse, 150 N. Y. Supp. 296. The president of a corporation is not disqualified to purchase treasury stock which the board of directors have voted to sell. Dusenberry *et al. v.* Sagamore Development Co., 150 N. Y. Supp. 229.

THE BY-LAWS OF A NEW YORK CORPORATION may require the unanimous vote of the directors to a sale of its business or property otherwise than in the usual course of business. General Corporation Law, Sec. 34, provides substantially that "unless otherwise provided" the action of the majority of the board of directors at a lawful meeting shall be the act of the board of directors. The words "unless otherwise provided" were evidently intended to permit different regulations in the by-laws to govern. Levin *v.* Mayer *et al.* 149 N. Y. Supp. 112.

A CANADIAN CORPORATION WAS HELD TO BE "DOING BUSINESS" IN OREGON under the following statement of facts: It had a general agent in the state who offered to loan money on mortgages upon real property in Oregon. Applications for loans were made to him and he forwarded them to the company at its office in British Columbia for approval. When approved the Company issued to its agent an undertaking agreeing to make the required loan in consideration of repayment in monthly instalments. The undertaking being assignable, the agent at once assigned it to the prospective borrower, who thereupon made his payments to the agent or to the Company, at his option. In holding this to be the transaction of business within the state, the Court said, in part: "The business does not consist of the securing of one loan only, or of a limited number, but of continuous and numerous transactions of the kind, with numerous persons, and cannot be other than a carrying on of business, and that within the state." National Mercantile Co. *v.* Watson, Corporation Commissioner, *et al.*, 215 Fed. 929.

STOCK DIVIDENDS may be declared when a corporation's assets exceed its debts and the amount of its capital stock. When the stockholders act honestly and in good faith in placing a value upon the assets of the corporation for the purpose of increasing its stock and declaring a stock dividend no creditor can successfully complain, although the corporation is subsequently adjudicated an insolvent. Northern Bank & Trust Co. *v.* Day, 145 P. 182.

A BY-LAW OF A CORPORATION providing that a majority of the directors shall constitute a quorum was construed in Burton *v.* Lithic Mfg. Co., 144 P. 1149, to mean a majority of all the directors as if the entire board were filled and not a majority of directors in office where vacancies existed in the board.

A MANUFACTURING CORPORATION IN PENNSYLVANIA is exempt from the capital stock tax on that portion of its capital stock invested purely in the manufacturing plant and business. (Act of June 8, 1893.) A manufacturing company whose business requires the expenditure of large sums of money for materials at uncertain times, and which temporarily invests the money so needed in securities readily convertible into cash, is exempt from tax on the amount of its capital stock so invested. The court held, in Commonwealth *v.* John B. Stetson Co., 17 Dauphin County Reports, 278, that a manufacturing company has the right to have on hand an amount of working capital necessary for the proper conduct of its business and such capital is entitled to be regarded as actually and exclusively employed in manufacturing, although it may be temporarily invested in securities which are sold from time to time as the company needs money to carry on its manufacturing.

THE CORPORATE LOAN TAX IN PENNSYLVANIA is a tax imposed upon the citizens of that state, based upon their ownership of bonds or other evidences of indebtedness of corporations. The act of June 30, 1885 (P. L. 193) makes it the duty of the treasurer of each private corporation doing business in the State, upon the payment of any interest upon any bond or other evidence of indebtedness held by residents of the state, to assess and deduct the tax and pay it to the State Treasurer. He is also required to report the assessment to the Auditor General. This report is known as the Corporate Loan Report. The Supreme Court of Pennsylvania has recently held that this Act has no extraterritorial effect on corporate officers outside the state. A foreign corporation doing business and owning property in Pennsylvania, whose treasurer resided in New York, could not be required by the act in question to report its corporate loans or deduct and pay the tax for its bondholders. The recourse of the state is in collecting the tax directly from the bondholders residing within its jurisdiction. The fact that the bonds contained a "tax free" clause did not create any obligation of the corporation to the State, that being a matter between the respective bondholders and the corporation. The further fact that the interest on the bonds was payable at the office of a trust company in Pennsylvania to which the necessary funds were sent from New York imposed no duty on the trust company under the act, as the treasurer of the company is the person charged with the duty of assessing the tax. Since a non-resident treasurer could not be compelled to perform this prerequisite to the collection of the tax, the trust company could not be ordered to deduct a tax which in point of fact had never been assessed. Commonwealth *v.* Barrett Mfg. Co., 92 A. 302.

In another case it was held that a foreign corporation must be doing business in the commonwealth, that is, must have capital employed in the state for its corporate purposes in order to come within the purview of the act. Thus, a corporation which kept an office in Pennsylvania for the convenience of its secretary and for the use of its directors, to hold their meetings and give directions for the operation of the company's business in another state, which office was also used for the convenience of the Pennsylvania stockholders in transferring stock, was not "doing business" in Pennsylvania within the meaning of the act of June 30, 1885, so as to impose any duty upon the treasurer in assessing or collecting the corporate loan tax. Commonwealth *v.* The Tonopah and Goldfield Railroad Co., 17 Dauphin Co., Rep. 261.

THE FOREIGN CORPORATION LAW OF SOUTH DAKOTA (Rev. Codes 1903, Secs. 883, 885) declares that no foreign corporation, except those created for religious and charitable purposes, "shall transact any business within this state, or acquire, hold and dispose of property, real, personal or mixed, within this State, or sue or maintain any action at law or otherwise in any of the courts of this State" until it shall have filed an authenticated copy of its charter and appointed a resident agent on whom process may be served. In Sioux Remedy Co. *v.* Cope, 133 N. W. 683, referred to in The Corporation Trust Company Journal, Number 29, the Supreme Court of South Dakota held that while the State could not make non-compliance with the statute a ground for forbidding or invalidating sales in

interstate commerce, it could make such non-compliance a ground for preventing the maintenance of any action in the courts of the State based upon such a sale; in other words, that the State, although unable to condition the right to make the sale or its validity upon a compliance with the statute, could so condition the right to sue for the purchase price in the courts of the State. The Supreme Court of the United States in reversing the judgment of the South Dakota Court holds that when a foreign corporation goes into a state to enforce, according to the usual or prevailing methods, the collection of the purchase price of merchandise sold in interstate commerce, it is there for a legitimate purpose of such commerce, and the State cannot obstruct or hamper the attainment of that purpose; that the requirements of the South Dakota statute have no natural or reasonable relation to the right to sue, no bearing upon the merits of any question of procedure or costs, are not directed against any abusive use of judicial powers, and are plainly onerous. The requirement as to the appointment of a resident agent for service of process is particularly burdensome because it withholds the right to sue even in a single instance until the corporation renders itself amenable to suits in all the courts of the State by whosoever chooses to sue it there. A foreign corporation may sue in the State courts upon contracts arising out of interstate commerce upon conforming to the prevailing modes of procedure and submitting to the usual rules respecting costs, the giving of security therefor, and the like. Sioux Remedy Co. *v.* Cope, *et al.*, No. 37, October Term, 1914, not yet reported.

TAX LIENS IN SOUTH DAKOTA are paramount upon all personal property owned by the taxpayer. Sec. 2191 Pol. Code. The result is to burden each and every article of personal property belonging to the taxpayer with all of the personal taxes levied against him. A corporation which sold machinery to a citizen of that state took a chattel mortgage thereon to secure the payment of the purchase price. Thereafter taxes were levied against the citizen. After foreclosure of the chattel mortgage, the Supreme Court of South Dakota held that a lien attached to the machine in question not only for taxes levied upon it but also for all taxes levied against the former owner, including school, poll and dog taxes. The court said in part: "If the statute is obnoxious because it acts as a restraint upon the free exchange or alienation of personal property, or renders it unsafe to deal in such property, then it should be repealed or amended, but this relief must be sought from the legislature and not from the court." Minneapolis Threshing Machine Co. *v.* Roberts County, 149 N. W. 163.

THE CORPORATION LAWS OF TENNESSEE prohibit the issue of stock except for cash or its equivalent. Where services are performed under a contract with promoters and the corporation afterwards organized adopts such contracts by accepting the benefits thereof, it is bound thereby and the services so rendered are the equivalent of cash. *In re* Ballou, 215 Fed. 810.

A DECISION OF IMPORTANCE TO MANUFACTURING AND CONTRACTING COMPANIES was summarized in our Journal No. 44. (Browning *v.* City of Waycross, 233 U. S. 16; 34 Sup. Ct. 578; 58 L. Ed. 828.) In this case the Supreme Court of the United States held that an act is intrastate in character when it attempts to connect interstate commerce articles with, or to make them a part in the state of property which is not and cannot be subject to interstate commerce, intimating, however, that there might be cases where, because of some intrinsic and peculiar quality or inherent complexity of the article, it might be necessary, in order to carry out the interstate commerce transaction, to also install or put in place the article. This rule has been followed by the Court of Civil Appeals of Texas in two recent cases. Buhler *vs.* E. T. Burrowes Company, 171 S. W. 791 and York Mfg. Co. *vs.* Colley, 172 S. W. 206. In the former case a foreign corporation sold screens to a resident of Texas. It was clear that the transaction constituted interstate commerce, except for the fact that the screens were to be installed. The agent who solicited and received the order, did the necessary work to fit the screens and to attach the fixtures to the house. This act made the transaction one of intrastate character because the corporation bound itself to put up the screens and did put them up in the state. The corporation, therefore, was prohibited from recovering on the contract in the courts of the state, not having first obtained a permit to do business in Texas. In the York Mfg. Co. case a foreign corporation agreed to deliver an ice manufacturing plant in Texas and to furnish an engineer to supervise

its installation. The evidence did not show that the contract to install or to furnish an engineer was necessary to enable it to make the sale to the Texas resident. The court held that the installation was an act of "doing business" in the state and that the corporation was subject to the disability of a foreign corporation for doing business without a permit. If the installation had been so complex a matter as to require specially trained men for the work, the court intimates that a different rule might apply under the doctrine of the Federal Supreme Court laid down in the Browning case, but the burden to show that fact rested on the corporation claiming the protection of the Interstate Commerce Clause. It has heretofore been held in many states that contracts for the sale of machinery in one state to be installed in another by the seller are protected by the Commerce Clause of the Federal Constitution, but the rule laid down in the Browning case greatly modifies this construction and will undoubtedly be followed generally by the state courts.

THE FOREIGN CORPORATION LAWS OF TEXAS require foreign corporations obtaining permits to do business in the state to pay fees based upon the total authorized capital stock (Rev. Stats. 1911, Art. 3837) and an annual franchise tax based upon the total authorized capital stock or if the amount of capital stock outstanding plus the surplus and undivided profits exceeds the total authorized capital stock, then upon such aggregate sum. (Art. 7394.) The federal district court for the Northern District of Texas holds that where the joint effect of these two statutes is to make the privilege of doing a local business in Texas subject to the condition that a corporation first pay a given per cent. of all its capital and surplus, representing all its capital wherever situated, and all its business, intrastate and interstate, it is a burden on property and business outside the jurisdiction of the state. The statutes in question so obviously impose such a burden that it is not permissible to regard them as privilege taxes or excises, the amount of which is determined by something not having a necessary relation to the amount or value of things which are not subject to the state's taxing power. The exactions being so made that the amount of them cannot be determined without taking into account the amount of property and business which are not subject to state taxation, and being greater or less according as such property or business is greater or less, the necessary effect of the enforcement of them is to burden such property or business. The court, therefore, granted a preliminary injunction against the Attorney General and Secretary of State to restrain them from collecting the taxes in question from a foreign corporation doing both an intrastate and an interstate business in Texas. Crane Co. *v.* Looney, *et al.*, 218 F. 260.

FOREIGN CORPORATIONS IN VIRGINIA. The case of Dalton Adding Machine Co. *v.* State Corporation Commission, 213 Fed. 889, referred to in Journal No. 45, has been heard on appeal to the United States Supreme Court and judgment of the lower court affirmed. Case No. 190, October Term 1914, decided March 22, 1915. In another case involving the question of interstate commerce the Federal Supreme Court reverses the Virginia Supreme Court of Appeals which upheld the validity of a State Statute purporting to impose a license fee upon a traveling solicitor taking orders for goods to be shipped from a point outside of Virginia. J. G. Davis *v.* Comm. of Virginia, Case No. 184, October Term 1914, decided March 22, 1915.

A FOREIGN CORPORATION IN WASHINGTON was held not to be "doing business" in the state although one of its salesmen had an office in the state where he kept and exhibited samples and from which he made trips throughout the state soliciting orders. Goods were shipped from the office of the corporation in another state and orders were forwarded there for acceptance or rejection. The corporation's name was in the local telephone directory; occasionally the agent resold goods which did not prove satisfactory to the customers to whom they were shipped, but these resales were also subject to approval by the corporation; and once the agent sold his samples in his office when certain lines of stock had been exhausted, all of which the court held to be only incidental to the corporation's interstate commerce. M. E. Smith & Co. *v.* Dickinson *et al.* 142 P. 1133.

THE WISCONSIN INCOME TAX LAW provides that any person who has paid a tax assessed on his personal property during any year shall be permitted to present the receipt to the tax collector and have it accepted as payment of his income tax assessed during that year. A tax assessed in 1913 for personal property omitted from the tax rolls in previous years, through no fault of the taxpayer, is a tax assessed in 1913 so as to permit it to be set off against income taxes assessed in the same year. City of Milwaukee *et al. v.* Patton, 149 N. W. 381.

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